

## **EXHIBIT 5-A**

### **Department of Interior Bureau of Reclamation**

#### **Salinas and Carmel Rivers Basin Study MEMORANDUM OF AGREEMENT**

The United States Department of Interior, Bureau of Reclamation (Reclamation), the San Luis Obispo County Flood Control and Water Conservation District; Monterey County Water Resources Agency; Monterey Peninsula Water Management District and Monterey Regional Water Pollution Control Agency agree to work collaboratively to perform the Salinas and Carmel Rivers Basin Study (SCRBS) as part of Reclamation's WaterSMART Program. This Memorandum of Agreement (MOA) establishes the terms that will guide the performance of the Study. The SCRBS includes the entire watersheds of both the Salinas and Carmel Rivers.

This MOA is intended to facilitate cooperative efforts for mutual provision of services and support, and technical assistance by the Parties in the conduct of meeting the objectives and scope of this MOA.

#### **I. Purpose**

The purpose of the SCRBS is to evaluate existing and potential future imbalances between water supplies and demands in the Salinas and Carmel River Basins and propose a range of strategies which may be employed to alleviate or mitigate identified imbalances. As a collaborative effort between four non-federal Partner agencies who are participating with Reclamation and the U.S. Geological Survey, the SCRBS will include a comprehensive assessment of current supplies and demands, model future water supplies and demands, account for uncertainties in future climate conditions, population growth, and other socioeconomic trends. In response to identified supply and demand imbalances, the SCRBS will evaluate how various strategies may perform over a range of potential future climate and socioeconomic conditions.

### **ARTICLES**

#### **I. Definitions**

- A. Reclamation means the United States Department of the Interior, Bureau of Reclamation.
- B. Non-Federal Partners means San Luis Obispo County Flood Control and Water Conservation District; Monterey County Water Resources Agency; Monterey Peninsula Water Management District and Monterey Regional Water Pollution Control Agency
- C. Parties means Reclamation and the Non-Federal Partners.

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- D. In-Kind Services means services provided by a Non-Federal Partner that substantially contribute to the completion of the work task or task identified.
- E. Confidential Information means trade secrets or commercial or financial information that is privileged or confidential under the meaning of 5 USC 552(b)(4).
- F. Intellectual Property means any invention that is legally protected through patents, copyrights, trademarks, and trade secrets or otherwise protectable under Title 35 of the United States Code, under 7 USC 2321, et seq., or under the patent laws of a foreign country.
- G. Key Personnel means Reclamation and Non-Federal Partner Agency representatives to the SCRBS Executive Team; Reclamation and Non-Federal Partner Agency representatives to the SCRBS Study Team as identified below in Section V, Article 14 – Notices and Key Personnel.
- H. Subject Invention means any invention or other Intellectual Property conceived or first reduced to practice under this MOA which is patentable or otherwise protectable under Title 35 of the United States Code, under 7 USC 2321, et seq., or under the patent laws of a foreign country.

## **II. Authorities and Financial Obligations**

- A. Reclamation's authority to enter into this MOA:
  - 1. Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388; 43 U.S.C. 372, et seq.) and acts amendatory thereof and supplementary thereto.
  - 2. Title IX, Section 9503 of the Omnibus Public Land Management Act of 2009 (P.L. 111-11, 123 Stat. 991).
- B. Non-Federal Partner's statutory authority to enter into this MOA:
  - 1. San Luis Obispo County Flood Control and Water Conservation District-  
The District operates under the San Luis Obispo County Flood Control and Water Conservation District Act, set forth in Chapter 49 of the Appendix to West's Annotated California Water Code (California Water Code App. § 49-1 et seq.).
  - 2. Monterey County Water Resources Agency-  
Monterey County Water Resources Act (1990 Stats. 1159, 1991 Stats. 1130, 1993 Stats. 234, and 1994 Stats. 803)
  - 3. Monterey Peninsula Water Management District-  
California Water Code - Chapter 118- Monterey Peninsula Water Management District Law
  - 4. Monterey Regional Water Pollution Control Agency-  
Joint Exercise of Powers Agreement for the Monterey Regional Water Pollution Control Agency, Executed June 1979.

1. Cost Sharing: The costs of the SCBS will be shared between Reclamation and the Non-Federal Partners in the following amounts:

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- a. Reclamation: not to exceed \$1,660,144;
- b. Non-Federal Partners: at least \$1,660,144;

The Non-Federal Partners' financial contributions will be in the form of in-kind products and services, predominately modeling analyses and staff participation. Reclamation's financial contribution to the Basin Study shall not exceed 50% of the total cost. All or part of the Non-Federal Partners' share may be provided as in-kind services. Valuation of in-kind services shall be in accordance with 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87).

3. Financial Obligations: This MOA is not a funding document and does not authorize the obligation or transfer of funds. If a subsequently identified activity or project is identified that may require Reclamation to expend funds received from the Non-Federal Partners for investigations, surveys, construction work, or any other development work incident thereto involving operations similar to those provided for by the Reclamation law, a Contributed Funds Agreement, pursuant to the Sundry Civil Expenses Appropriations Act for 1922 (43 USC 395) will be required. Funds contributed by Non-Federal Partner(s) will only be used to pay for costs incurred by Reclamation or its contractors associated with completing the tasks described in this Agreement or modifications to this Agreement.

4. Anti-Deficiency Act: All activities, responsibilities, and commitments made under or pursuant to this MOA, including any Contributed Funds Agreements under this Agreement, are subject to the availability of appropriated funds and each Agency's budget priorities, as determined by each Agency, and neither the Non-Federal Partners nor Reclamation are obligated in any way under this MOA to expend appropriations or to enter into any contract, assistance agreement, Contributed Funds Agreement, or other financial obligation. No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

### **III. Publications, Reports, and Confidentiality**

5. Publications: The Parties understand and agree that this MOA may be disclosed to the public in accordance with the Freedom of Information Act or California Public Records Act. Subject to the requirements of Article 7- Confidentiality and preservation of rights in Subject Inventions, a party may publish information developed for the SCRBS prior to its official release PROVIDED:

- a. The other Parties are allowed to review the manuscript at least sixty (60) days prior to submission for publication, and
- b. The publication shall acknowledge this MOA and the contributions of each party's personnel.

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**6. Reports:** The results of this MOA and science, engineering, and technology data that are collected, compiled, and evaluated under this MOA shall be shared and mutually interchanged by Non-Federal Partners and Reclamation. A final report summarizing all data shall be submitted to Reclamation and the Non-Federal Partners through the key contacts identified in Section V, Article 15 within the performance period of this MOA, as defined in Section IV Article 9. The final report will be in the public domain, and will be published on Reclamation's Basin Study website.

**7. Confidentiality:** Any Confidential Information used in this MOA or SCRBS shall be clearly marked confidential or proprietary by the submitter and shall not be disclosed by the Recipient without permission of the owner. To the extent a party orally submits its Confidential Information to the other Parties, the submitting party will prepare a document marked "CONFIDENTIAL" embodying or identifying in reasonable detail such orally submitted Confidential Information and provide the document to the other Parties within thirty (30) days of disclosure.

No party shall be bound by confidentiality if the Confidential Information received from another party:

- a. Already is available to the public or known to the recipient;
- b. Becomes available to the public through no fault of the recipient; or
- c. Is nonconfidentially received from another party legally entitled to it.

It shall not be a breach of this MOA if the Non-Federal Partners are required to disclose the Confidential Information by a valid order of a court or other government body, or as otherwise required by law, including without limitation the California Public Records Act, or as necessary to establish the rights of a party under this MOA; PROVIDED THAT the Non-Federal Partner(s) shall provide prompt prior notice thereof to Reclamation to enable Reclamation to seek a protective order or otherwise prevent such disclosure, and PROVIDED FURTHER THAT the Confidential Information otherwise shall continue to be confidential.

**8. Intellectual Property:** Unless otherwise agreed by the Agencies, custody and administration of inventions made as a consequence of, or in direct relation to, the performance of activities under this MOA shall remain with the respective inventing party. In the event that an invention is made jointly by employees of the Parties or an employee of a Party's contractor, the Parties shall consult and agree as to future actions toward establishment of patent protection for the invention.

## **IV. Term and Termination**

**9. Term:** This MOA shall take effect upon the approval of the Parties and, unless terminated per Section IV, Article 11- Termination, will expire three years and 6 months from the date of the last signature to this MOA. Any Contributed Funds Agreement(s) entered into pursuant to this MOA will be limited to an initial period of performance not to exceed the term of this

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MOA, although they may be renewed for additional periods of performance not to exceed the term of this MOA for any renewal period as mutually agreed to by the Parties to this MOA and the subject Contributed Funds Agreement.

10. Amendment: If a party desires a modification in this MOA, the Parties shall confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed, and dated by the authorized representatives of the Parties.

11. Termination: A party may terminate its participation in this MOA prior to its expiration at any time, with or without cause, and without incurring any liability or obligation to the other Parties, by giving the other Parties at least ninety (90) calendar days prior written notice of termination.

### **V. General**

12. Authorities not altered: Nothing in this MOA alters the statutory authorities or any other authorities of the Non-Federal Partners or Reclamation. This MOA does not supersede or void existing agreements between the Non-Federal Partners and Reclamation.

13. Liability: It is understood and agreed that no party to this MOA shall be responsible for any damages or injuries arising out of the conduct of activities governed by this MOA, except to the extent that such damages and/or injuries were caused by the negligent or wrongful acts or omissions of its employees, agents or officers. Reclamation's liability shall be limited by the Federal Tort Claims Act, 28 USC 2671, *et seq.*

14. Limitations: This MOA sets out the Parties' intentions and objectives and does not direct or apply to any person outside the Non-Federal Partner(s) and Reclamation. This MOA is not intended to, and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by anyone against the United States, its agencies, its officers, or any person.

15. Notices and Key Personnel: Notices between the Parties and copies of correspondence among the scientific and/or technical representatives of each party that interpret or may have a bearing on the legal effect of this MOA's terms and conditions shall be sent to the key personnel below. Reclamation's key personnel are authorized to perform scientific and/or technical activities falling within the Scope of this MOA.

#### **A. Non-Federal Partner Key Personnel:**

1. Mr. Wade Horton, Public Works Director  
San Luis Obispo County Flood Control and Water Conservation District  
County Government Center, Room 206  
San Luis Obispo, CA 93408  
(805) 781-5252
2. Mr. Robert Johnson, Assistant General Manager  
Monterey County Water Resources Agency

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893 Blanco Circle  
Salinas, CA 93901  
(831) 755-4860

3. Mr. Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
P.O. Box 85  
Monterey, CA 93942  
(831) 658-5620
4. Mr. Paul Sciuto, General Manager  
Monterey Regional Water Pollution Control Agency  
5 Harris Court, Building D  
Monterey, CA 93940  
(831) 372-3367

### **B. Reclamation:**

Regional Planning Officer  
Bureau of Reclamation  
2800 Cottage Way, MP-700  
Sacramento, CA 95826  
(916) 978-5060

16. Subcontracting Approval: A party hereto desiring to obtain and use the services of a third party via contract or otherwise shall give prior notice to the other Parties, including details of the contract or other arrangement. This requirement is to assure that confidentiality is not breached and rights in Subject Inventions are not compromised.

17. Assignment: No party has the right to assign this MOA or any of its responsibilities hereunder.

18. Endorsement: The Non-Federal Partner(s) shall not in any way state or imply that this MOA or the results of this MOA is an endorsement by the Department of the Interior, Federal Government, or Reclamation of its organizational units, employees, products, or services except to the extent permission is granted by an authorized representative of Reclamation.

19. Regulatory Compliance: The Parties acknowledge and agree to comply with all applicable laws and regulations of the state, Federal, and local environmental and cultural and paleontological resource protection laws and regulations as applicable to the activities or projects for this MOA. These regulatory compliance requirements may include but are not limited to, the National Environmental Policy Act (NEPA) including the Council on Environmental Quality, the Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office.

20. Disputes: Any dispute arising under this MOA, which cannot be readily resolved, shall be submitted jointly to the key personnel officials, identified in Section V, Article 15, Notices

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and Key Personnel. Each party agrees to seek in good faith to resolve the issue through negotiation or other forms of nonbinding dispute resolution processes mutually acceptable to the Parties. Pending the resolution of any dispute or claim pursuant to Section V, Article 20, the Parties agree that performance of all obligations shall be pursued diligently.

21. Force Majeure: No party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such party:

- a. Which causes the party to be unable to perform its obligations under this MOA; and
- b. Which it has been unable to overcome by the exercise of due diligence.
- c. This includes, but is not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strikes, labor dispute, failure or sabotage of the party's facilities or any order or injunction made by a court or public agency.

22. Relationship between the Parties: The Parties are and shall remain independent contractors and nothing herein shall be construed to create a partnership, agency, joint venture, or teaming agreement between the Parties.

23. Severability: The illegality or invalidity of any provision of this MOA shall not impair, affect, or invalidate the other provisions of this MOA.

24. Governing Law: The construction, validity, performance, and effect of this entire MOA shall be governed by the laws applicable to the Government of the United States of America in accordance with applicable Federal Law as interpreted by Federal Courts.

25. Waiver: The failure of a party to enforce any term hereof shall not be deemed a waiver of any rights contained herein.

26. Invalid Provision: In the event any provision of this MOA is determined to be invalid or unenforceable under any controlling law, the invalidity or unenforceability of that provision shall not in any way affect the validity or enforceability of the remaining provisions of this MOA.

27. Counterparts: This MOA may be executed in counterparts and each such counterpart shall be equally effective.

**IN WITNESS WHEREOF, the Parties have caused this MOA to be executed.**

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**For the Non-Federal Partners:**

\_\_\_\_\_  
Name  
Monterey County Water Resources Agency

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name  
San Luis Obispo County Flood Control  
and Water Conservation District

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name  
Monterey Peninsula Water Management District

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name  
Monterey Regional Water Pollution Control Agency

\_\_\_\_\_  
Date

**For Reclamation:**

\_\_\_\_\_  
David H. Murillo,  
Regional Director  
Mid-Pacific Region

\_\_\_\_\_  
Date



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**ATTACHMENT A**

**PLAN OF STUDY  
SALINAS and CARMEL RIVERS BASIN STUDY**

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